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81-2148

NO. ————

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

EDDIE THOMPSON, JR.,
Plaintiff-Petitioner,

vs.

COVINGTON HOUSING DEVELOPMENT CORP., JOSEPH CONDIT, JUNE HEDRICK,
Defendants-Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

EDDIE THOMPSON, JR., Pro Se
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I hereby certify that 3 copies of the foregoing Petition have been served upon Mr. Stephen McMurtry, Assistant City Solicitor, City-County Building, Covington, Kentucky 41011, and Mr. William F. Smith, United States Attorney General, Washington, D.C., by the United States mail this ..... day of May 1982.

.....
EDDIE THOMPSON, JR., Pro Se

COURT INDEX PRESS, INC. — 215 E. Ninth Street, Cincinnati, Ohio 45202 — (513) 241-1450

QUESTIONS PRESENTED

1. Did the Court of Appeals have jurisdiction to determine the timely Appeal of the Final (void) Judgment of the Trial Court?
2. In a Default Judgment against Covington Housing Development Corporation, an agency of the City of Covington, should the Judgment recite the fact of the agency?
3. When Trial Court has made a finding for Plaintiff in a civil rights action, should that Court adjust its remedies to grant the necessary relief?

INDEX

	Page
QUESTIONS PRESENTED	1
OPINION BELOW	1
JURISDICTION	2
STATEMENT	3
REASONS FOR GRANTING WRIT	5
CONCLUSION	9
APPENDIX	
Order Denying Petition for Rehearing	1a
Order Dismissing Appeal	2a
"Show Cause" Order	6a
Order Denying City's Motion to Dismiss	9a
Order, District Court – October 29, 1980	10a
Order, District Court – September 12, 1980	12a
Judgment – June 2, 1980	13a
Order, District Court – May 19, 1980	15a
Order, District Court – April 18, 1980	16a
Order, District Court – October 5, 1977	20a
Complaint – Page 1	22a

Citations

	Page
Bell v. *Lindsey Wilson College*, 490 S.W. 2d 145	6
Bivens v. *Six Unknown Federal Narcotic Agents*, 403 U.S. 388, 392, 29 LEd 2d 619, 915 SCt 1999	7
Brown v. *Kenron Aluminum & Glass Corp.*, 477 F 2d 526, 531	5
Cohon v. *Beneficial Industrial Loan Corp.*, 93 LEd 1528, 337 U.S. 541, 69 SCt 1221	2, 8
Edmonds v. *Stratton*, 457 S.W. 2d 228 1970 (MO)	6
Gillespie v. *U.S. Steel*, 85 SCt 308, 379 U.S. 148, 13 LEd 2d 199	2, 8
Leishman v. *Associated Wholesale Elec. Co.*, 318 U.S. 203 87 LEd 714	7
Monell v. *Department of Social Services of the City of New York*, 436 U.S. 658, 56 LEd 2d 611, 98 SCt 2018	8
Reynolds v. *Volunteer State Life Ins. Co.*, 80 S.W. 2d 1087, 1092	6-7
RE: Uranium Anti Trust Litigation, 473 F Supp. 382	7
Sears v. *Mackey*, 100 LEd 1297, 351 U.S. 427, 76 SCt 895	2, 8
Theodoropoulos v. *Thompson-Starrett Co.*, 418 F 2d 350	7
United States v. *Dieter*, 429 U.S. 6, 50 LEd 2d 8, 97 SCt 18	7

Page

United States v. *Healy*, 376 U.S. 75, 84 SCt 553, 11 LEd 2d 527 (1964) 7

Vega Matta v. *Alverez de Choudens*, 440 F. Supp. 246 (1977) 5

Wansor v. *George Hantscho Co., Inc.*, 570 F 2d 1202, 1978 5th Cir. 6

Zimmern v. *United States*, 298 U.S. 167, 169 56 SCt 706, 80 LEd 1118 7

Miscellaneous:

28 U.S.C.A. 1291 ..... 5, 8
28 U.S.C.A. 1292 5
28 U.S.C.A. 54 (b) 5, 8
F.R.C.P. 55 (b) 5
F.R.C.P. Rule 59 ..... 1, 4, 6
F.R.C.P. Rule 60 ..... 1, 4, 6
28 U.S.C. 1254 (1) 2

NO. ———

IN THE

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OCTOBER TERM, 1981

EDDIE THOMPSON, JR.,
Plaintiff-Petitioner,

vs.

COVINGTON HOUSING DEVELOPMENT CORP., JOSEPH CONDIT, JUNE HEDRICK,
Defendants-Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioner, Eddie Thompson, Jr., respectfully prays that a Writ of Certiorari issue to review the Order and/or Judgment of the United States Court of Appeals for the Sixth Circuit, entered in the above styled case on January 26, 1982; Petition for Rehearing denied on April 5, 1982.

OPINION BELOW

The Order of the Court of Appeals is annexed to the Petition as Appendix B, Page 2a. The Order denying Petition for Rehearing is annexed as Appendix A, Page 1a. The Judgment of the District Court is annexed as Appendix G, Page 13a. The Order of the District Court Denying Motion to Alter and Amend is annexed as Appendix

F, Page 12a. The Order of the District Court denying timely motions (Rule 59 and Rule 60, F.R.C.P.) is attached as Appendix E, Page 10a.

JURISDICTION

The Order of the Court of Appeals is annexed to this Petition as Appendix B, Page 2a. A timely Petition for Rehearing was denied on April 5, 1982, Appendix A, Page 1a. And this Petition for Certiorari was filed within ninety (90) days of that date. Mandate issued on April 13, 1982. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254 (1).

Cases bestowing jurisdiction on this Court:

Cohon v. *Beneficial Industrial Loan Co., supra,* 337 U.S. 541

Gillespie v. *U. S. Steel Corp., supra,* 379 U.S. 148

Sears v. *Mackey, supra,* 351 U.S. 427

STATEMENT

The instant action was brought as a result of successful efforts by June Hedrick and Joseph Condit to deprive Plaintiff-Appellant of: (1) His job as Executive Director of the Covington Housing Development Corporation and, (2) The withholding of wages owed to Plaintiff-Appellant by Covington Housing Development Corporation.

Covington Housing Development Corporation, June Hedrick, and Joseph Condit are and/or were agents of the City of Covington. App. K, Page 22a.

The City has paid all of Covington Housing Development Corporation's obligations except wages owed to employees. These expenses include taxes withheld *and penalties* from taxes on wages that were never paid by Covington Housing Development Corporation.

The District Court dismissed Hedrick and Condit in an earlier Order on October 5, 1977, App. J, Page 20a. Plaintiff told a precautioneer appeal from that order, which was dismissed by the Court of Appeals for lack of jurisdiction.

Pursuant to a motion for a trial date, the District Court advised the parties that Covington Housing Development Corporation was in default and as such, a hearing was appropriate. App. I, Page 16a.

After a hearing on June 2, 1980, the District Court determined that Covington Housing Development Corporation, an agent of the City of Covington, should pay Plaintiff-Appellant $53,000. App. G, Page 13a.

However, the District Court neglected to mention in the Judgment the fact that Covington Housing Development was an agent of the City of Covington.

On September 15, 1980, the District Court entered an Order signed on September 12, 1980, denying Appellant's

timely motion to Alter and Amend its Judgment. App. F, Page 12a.

By now it was clear to all that the June 2, 1980 Judgment was not a valid Judgment. The City would not pay the Judgment because of the fact that "Covington Housing Development Corporation was not named as an agency of the City in the Judgment." App. G, Page 13a.

On September 24, 1980, Plaintiff-Appellant made a timely (Rule 59, F.R.C.P.) motion (within 10 days of the District Court's Order entered on September 15, 1980) and a Rule 60 motion, in a futile attempt to get a valid Judgment from the District Court, to no avail. App. E, Page 10a. Appellant filed his appeal within 30 days of this motion being denied.

Petitioner considers the Judgment void since he cannot collect it.

Counsel for the City filed briefs in the Court of Appeals for the City of Covington, June Hedrick, and Joseph Condit. Counsel for the City also filed a motion to dismiss the appeal. After Appellant's response to the motion, the Court of Appeals denied the City's motion to dismiss. App. D, Page 9a.

In a rare and unexplainable move, on November 16, 1981, the Court of Appeals, sua sponte, issued an order purporting to give Plaintiff-Appellant 21 days to show why his appeal should not be dismissed. App. C, Page 6a. However, Appellant never received the November 16, 1981 order until February 16, 1982. The Clerk of the Court of Appeals neglected to put Appellant's post office box number on the correspondence, and it was returned to the Court of Appeals 2 days later, November 18, 1981. No further effort was made by the Clerk concerning the November 16, 1981 Order.

On January 26, 1982, pursuant to it's November 16, 1981 order, the Court of Appeals dismissed Appellant's Appeal. App. B, Page 2a.

Appellant did not receive the January 26, 1982 Order until February 13, 1982. A Deputy Clerk of the Court of Appeals telephoned Appellant to inquire of his address. The post office box number had been omitted again by the Clerk of the Court of Appeals.

Appellant's Petition for Rehearing was denied on April 5, 1982. App. A, Page 1a.

REASONS FOR GRANTING THE WRIT

Decree is final for purpose of appealability, when it terminates litigation between parties on the merits of the case and leaves nothing to be done, but to enforce by execution, what has been determined. *28 USCA 1291, 1292; 28 USCA 54(b).*

The nature of a claim is defined by the pleadings. Under Rule 55, F.R.C.P. when a default Judgment is entered by the Court, the allegations of the complaint, except as to amount of damages are taken as true. *Vega Matta* v. *Alvarez de Coundens,* 440 F Supp 246 (1977) ". . . and defendant has no further standing to contest the merits of plaintiff's right to recover. His only recourse is to show good cause for setting aside the default and, failing that, to contest the amount of the recovery." *Brown* v. *Kenron Aluminum & Glass Corp.,* 477 F 2d 526, 531.

The Court of Appeals, after reviewing Appellant's response denied the City's motion to dismiss. App. D, Page 9a.

Some Courts of Appeals have held, "Where a previous motion to dismiss was overruled and no motion to recon-

sider was filed the court would not reconsider its order overruling the motion." *Bell* v. *Lindsey Wilson College,* 490 S.W. 2d 145. SEE ALSO *Wansor* v. *George Hantscho Co., Inc.,* 570 F 2d 1202, 1206 (1978) 5th Cir.

Examination of the Court of Appeals' Order of January 26, 1982, App. B, Page 2a, would indicate the Court dismissed the Appeal primarily because Appellant did not respond to the Court's Order of November 16, 1981. App. C, Page 6a. Since Appellant did not receive the Order until February 16, 1982, it was totally impossible to respond in 21 days. In dismissing, the Court of Appeals recognized the general rule that where a Petition for Rehearing, a motion to vacate, amend or modify a Judgment is seasonably made and entered the time for appeal does not begin to run until the disposition of the motion. SEE Order of Dismissal App. B, Pages 4a-5a. Had the Court of Appeals been serious about resolving the issues on appeal, oral argument would have been appropriate. "Oral arguments .... are encouraged by Appellate Courts in that they assist reviewing court to fuller understanding of theories and issues on appeal." *Edmonds* v. *Stratton,* 457 S.W. 2d 228 (1970) MO. This coupled with the fact that the Court of Appeals had already denied the City's motion to dismiss on February 12, 1981, (App. D, Page 9a) could lead to the conclusion that the dismissal was contra to Rule set down by this Court.

Thus, the ultimate question here is simply: When Appellant filed a timely motion (Rule 59 or Rule 60) for Reconsideration of District Court's Final (void) Judgment, was the time to appeal tolled?

Void Judgments have been said to be, "one which has no legal force or effect, invalidity of which may be asserted by any person whose rights are affected at any time and at any place directly or collaterally." *Reynolds* v. *Volun-*

teer State Life Ins. Co., Tex. Civ. App. 80 S.W. 2d 1087, 1092.

"A motion . . . in district court which seeks to amend or supplement findings of fact in more than purely formal or mechanical aspects tolls the appeals statute, and the time for taking an appeal runs from the date of the order disposing of the motion." *Leishman* v. *Associated Wholesale Elec. Co.*, 87 LEd 714, 318 U.S. 203.

When the District Court entered Judgment on June 2, 1980, there was no question, but that Appellant was entitled to a Judgment as pleaded.

"By definition there can be no inconsistency between the default Judgment and the pleadings inasmuch as default necessarily has effect of admitting all well pleaded facts in relating to liability." IN RE *Uranium Anti Trust Litigation*, 473 F Supp 382.

"Where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief." *Bivens* v. *Six Unknown Federal Narcotics Agents*, 403 U.S. 392.

In a case similar to ours, cited by the 6th Circuit Court of Appeals, App. B, Page 4a, timely motions tolled the time to appeal. *Theodoropoulos* v. *Thompson-Starrett Co.*, 418 F 2d 350.

"The District Court has plenary power (within appeal time) to modify his Judgment for error on fact or law or even to revoke it all together . . . finality is (was) lacking until (it's) his choice has been announced." *Zimmern* v. *United States*, 298 U.S. 167, 197 (1936).

Judgments in Federal Courts are non final for purpose of appeal so long as timely rehearing petitions are pending. *United States* v. *Healy*, 376 U.S. 75, 84; *United States* v. *Deter*, 429 U.S. 6.

Traditionally, this Court has held that, "The requirement of finality as a prerequisite of jurisdiction of a court of appeals to entertain appeals from all final decisions of a federal court is to be given a practical rather than a technical construction: The inquiry requires some evaluation of the competing considerations underlying all questions of a finality, that is, the inconvenience and cost of piecemeal on one hand and the danger of denying Justice on the other." *Cohon* v. *Beneficial Industrial Loan Corp.*, 93 LED 1528; *Gillespie* v. *U.S. Steel Corp.*, 13 LEd 2d 199.

It could be argued also that Hedrick and Condit are not mentioned in the Default Judgment. But, Rule 54 (b) of Federal Rules of Civil Procedure . . . which permits the entry of a Judgment upon one or more but less than all of the claims in a multiple claims action is valid . . . It does not supersede any statute controlling appellate jurisdiction and recognizes the statutory requirement of a "final decision" under 28 U.S.C. 1291 as a basic requirement for an appeal to the Court of Appeals . . . is valid both as to its negative effect, where the court refuses to make the requisite determination and direction, and as to its affirmative effect, where the court does make such determination and directions. *Sears* v. *Mackey*, 100 LEd 1297.

Indeed, municipalities simply cannot "arrange their affairs" on an assumption that they can violate constitutional rights indefinitely. *Monell* v. *Department of Social Services of the City of New York*, 436 U.S. 700.

CONCLUSION

The Order of Dismissal by the Court of Appeals should be reversed and the Judgment of the District Court modified to include the fact that Covington Housing Development Corporation is an agency of the City of Covington.

EDDIE THOMPSON, JR., Pro Se

APPENDIX A

IN THE
UNITED STATES COURT OF APPEALS
For The Sixth Circuit

No. 80-5469

EDDIE THOMPSON, JR.,
Plaintiff-Appellant,

v.

COVINGTON HOUSING DEVELOPMENT CORPORATION, JOSEPH CONDIT and JUNE HEDRICK,
Defendants-Appellees.

ORDER DENYING PETITION FOR REHEARING

(Filed April 5, 1982)

Before: MERRITT, BROWN and KENNEDY, Circuit Judges.

The majority of the court having not voted in favor of an en banc rehearing, the petition for rehearing has been referred to the hearing panel for disposition.

Upon consideration, it is ORDERED that the petition for rehearing be and hereby is denied.

ENTERED BY ORDER OF
THE COURT
/s/ JOHN P. HEHMAN
Clerk

APPENDIX B

IN THE
UNITED STATES COURT OF APPEALS
For The Sixth Circuit

No. 80-5469

EDDIE THOMPSON, JR.,
Plaintiff-Appellant,

v.

COVINGTON HOUSING DEVELOPMENT CORPORATION, JOSEPH CONDIT and JUNE HEDRICK,
Defendants-Appellees.

ORDER

(Filed January 26, 1982)

Before: MERRITT, BROWN and KENNEDY, Circuit Judges.

This case is before the Court upon consideration of an order entered on November 16, 1981, directing the plaintiff to show cause why this appeal should not be dismissed for lack of jurisdiction, to which plaintiff has failed to respond. This appeal has been referred to a panel of the Court pursuant to Rule 9(a), Rules of the Sixth Circuit. After examination of the record, this panel

argues unanimously that oral argument is not needed. Rule 34 (a), Federal Rules of Appellate Procedure.

On June 3, 1980, the District Court entered a final judgment in this civil rights action which granted a default judgment against the Covington Housing Development Corporation. The two individual defendants had been dismissed by a prior order of the District Court.

On June 10, 1980, plaintiff filed a timely motion to alter or amend the June 3 judgment. The District Court denied the motion on September 15, 1980. Plaintiff had 30 days to appeal this denial to this Court under Rule 4, Federal Rules of Appellate Procedure.

Rather than appealing, plaintiff filed another motion to alter or amend the judgment of June 3, 1980, and to reconsider the order entered on September 15, 1980. The District Court denied this second motion on October 29, 1980. Plaintiff filed a notice of appeal November 26, 1980, seventy-two days after the September 15 denial of his first motion to alter or amend.

Rule 4 (a), F.R.A.P., delineates four post-judgment motions, which, if timely filed, will toll the running of the thirty-day appeal time until disposition by the District Court: (1) a motion for judgment notwithstanding the verdict under Rule 50 (b), Federal Rules of Civil Procedure; (2) a motion pursuant to Rule 52 (b), Federal Rules of Civil Procedure, to amend or make additional findings of fact; (3) a motion to alter or amend the judgment pursuant to Rule 59 (e), Federal Rules of Civil Procedure; and (4) a motion for a new trial under Rule 59 (a), Federal Rules of Civil Procedure. If any of these four types of post-judgment motions is filed within ten days of entry of judgment, the thirty-day limitation is tolled and begins to run anew upon entry of the order denying

or granting the post-judgment motion. *See* Rule 4, Federal Rules of Appellate Procedure.

This circuit has held that subsequent motions for reconsideration will not continue to toll the limit. *Marten* v. *Hess,* 176 F.2d 834 (6th Cir. 1949), *Deena Products Co.* v. *United Brick & Clay Workers,* 195 F.2d 613 (6th Cir. 1952) (based on Rule 73 of the Federal Rules of Civil Procedures, equivalent to F.R.A.P. 4(a)). Other circuits and treatises concur that allowing such subsequent tollings would subvert the purposes of the rule by allowing a plaintiff to extend litigation indefinitely. *See, e.g., Dixie Sand and Gravel Co., Inc.,* v. *T.V.A.,* 631 F.2d 73 (5th Cir. 1980); 9 Moore's Federal Practice ¶ 204.12[1] (2d ed. 1980).

Courts have refused to follow the rule that such subsequent motions do not extend the time for appeal only under exceptional circumstances. *Trowel Trades Emp. Health* v. *Nezelek,* 645 F.2d 322 (5th Cir. 1981); *Theodoropoulos* v. *Thompson-Starrett Co.,* 418 F.2d 350 (2d Cir. 1969). We find no such circumstances in the case before us. Plaintiff seeks to make the city of Covington liable for his judgment against Covington Housing Development Corporation. He argues that such liability is premised on proofs of agency offered at the default hearing. Assuming such proofs arguendo, plaintiff had two bites at the apple — once at the hearing and again in his motion to alter or amend. In order for this Court to have jurisdiction, timely notice of appeal must be filed. *United States* v. *Robinson,* 361 U.S. 220 (1960). Timely notice of appeal was within 30 days of the September 15, 1980 denial of his first motion to alter or amend. His November 26, 1980 filing for appeal was not timely.

Accordingly, it is ORDERED that this appeal be, and

hereby is, dismissed for lack of jurisdiction. Rule 9 (d) 1, Rules of the Sixth Circuit.

ENTERED BY ORDER OF
THE COURT

/s/ JOHN P. HEHMAN
Clerk

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 80-5469

EDDIE THOMPSON, JR.,
Plaintiff-Appellant

vs.

COVINGTON HOUSING DEVELOPMENT CORPORATION,
JOSEPH CONDIT AND JUNE HEDRICK,
Defendants-Appellees

ORDER

(Filed November 16, 1981)

Plaintiff appeals the district court's final judgment in this civil rights action which granted a default judgment against the Covington Housing Development Corporation. Joseph Condit and June Hedrick had been dismissed as defendants by a prior order of the district court.

The Court of Appeals lacks jurisdiction to decide an appeal if notice of appeal is not timely filed, *United States* v. *Robinson*, 361 U.S. 220 (1960), and the appellate court cannot extend the time limitation. Rule 26(b), Federal Rules of Appellate Procedure. Notice of appeal must be filed with the Clerk of the District Court within thirty

days from the date of judgment unless a timely post-judgment motion tolls the running of the appeal time. Rule 4(a), Federal Rules of Appellate Procedule.

Rule 4(a), Federal Rules of Appellate Procedure, delineates four post-judgment motions, which, if timely filed, will toll the running of the thirty-day appeal time until disposition by the district court: (1) a motion for judgment notwithstanding the verdict under Rule 50(b), Federal Rules of Civil Procedure; (2) a motion pursuant to Rule 52(b), Federal Rules of Civil Procedure, to amend or make additional findings of fact; (3) a motion to alter or amend the judgment pursuant to Rule 59(e), Federal Rules of Civil Procedure; and (4) a motion for a new trial under Rule 59(a), Federal Rules of Civil Procedure. If any of these four types of post-judgment motions is filed within ten days of entry of judgment, the thirty-day limitation is tolled and begins to run anew upon entry of the order denying or granting the post-judgment motion. *See* Rule 4, Federal Rules of Appellate Procedure. However, a motion to reconsider an order denying a timely post-judgment motion does not toll the thirty-day limitation period that begins to run when the first post-judgment motion was denied. *See Dixie Sand and Gravel Company, Inc.* v. *Tennessee Valley Authority*, 631 F.2d 73 (5th Cir. 1980); *Wansor* v. *Hantscho Co., Inc.*, 570 F.2d 1202 (5th Cir.), *cert. denied*, 439 U.S. 953 (1978); *Ellis* v. *Richardson*, 471 F.2d 720 (5th Cir. 1973). *See also* 9 Moore's Federal Practice ¶204.12[1] at 4-67 (2d ed. 1980).

It appears from the record that the district court entered final judgment in this case on June 3, 1980. Plaintiff then filed on June 10, 1980, a timely motion to alter or amend the judgment of June 3, 1980. The district court denied the motion to alter or amend by order entered September 15, 1980.

Plaintiff had thirty days to file a notice of appeal from September 15, 1980, and no notice of appeal was filed within the permissible time. Plaintiff did not file his notice of appeal until November 26, 1980, seventy-two days after the order entered on September 15, 1980, which denied plaintiff's motion to alter or amend the judgment of June 3, 1980.

From the record it appears that plaintiff filed a second motion for the district court to alter or amend its prior rulings on September 24, 1980. However, as explained above, this untimely motion did not serve to extend plaintiff's time for filing his notice of appeal.

Accordingly, it is ORDERED that plaintiff show cause in writing no later than twenty-one (21) days from the file date of this order why this appeal should not be dismissed for want of jurisdiction.

ENTERED BY ORDER OF
THE COURT

/s/ JOHN P. HEHMAN
Clerk

APPENDIX D

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 80-5469

EDDIE THOMPSON, JR.,

Plaintiff-Appellant

vs.

COVINGTON HOUSING DEVELOPMENT CORPORATION,

Defendant-Appellee.

ORDER

(Filed February 12, 1981)

Upon consideration of the motion of the amicus curiae to dismiss the appeal herein,

It is ORDERED that the motion be and it hereby is denied.

ENTERED BY ORDER OF THE COURT

/s/ JOHN P. HEHMAN, Clerk

APPENDIX E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CIVIL ACTION NO. 77-35

EDDIE THOMPSON, JR.,

Plaintiff

vs.

COVINGTON HOUSING DEVELOPMENT CORPORATION,

Defendant

ORDER

(Filed October 29, 1980)

This matter is before the court on the following named motions, with regard to which, the court being advised,

IT IS ORDERED as follows:

1. The motion for reconsideration of the order dated September 12, 1980, is hereby denied. The court cannot consider a succession of duplicative motives. The grounds for this motion should have been raised prior to the entry of judgment in the case.

2. The motion to alter the judgment and to add defendants is hereby denied, as being untimely filed.

3. The motion to certify questions of law is denied. A certification is inappropriate in this case. Plaintiff's problem in this case, and many of the other cases he has brought, is that he persists in representing himself, rather than obtaining legal representation, which causes him to pursue erroneous courses of actions unauthorized by the Federal Rules of Civil Procedure, which the court cannot grant.

This 9th day of October, 1980.

/s/ WILLIAM O. BERTELSMAN
Judge

APPENDIX F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CIVIL ACTION NO. 77-35

EDDIE THOMPSON, JR.,

Plaintiff

vs.

COVINGTON HOUSING DEVELOPMENT CORPORATION,

Defendant

ORDER

(Filed September 12, 1980)

This matter being before the court on the motion of the plaintiff for leave to file a post-hearing memorandum and to alter and amend the judgment, and the court being advised,

IT IS ORDERED that both motions be, and they are, hereby denied. Plaintiff obviously misunderstands the procedural posture of this case, although it was thoroughly in this court's order of April 18, 1980, to which reference is made for an explanation of the ruling contained in this order.

This 12th day of September, 1980.

/s/ WILLIAM O. BERTELSMAN
Judge

APPENDIX G

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CIVIL ACTION NO. 77-35

EDDIE THOMPSON, JR.,

Plaintiff

vs.

COVINGTON HOUSING DEVELOPMENT CORPORATION,

Defendant

DEFAULT AND JUDGMENT

(Filed June 2, 1980)

DEFAULT

The defendant, Covington Housing Development Corporation, having failed to answer or otherwise plead – an entry of DEFAULT be and hereby is entered in favor of the plaintiff against said defendant, COVINGTON HOUSING DEVELOPMENT CORPORATION.

JUDGMENT

Pursuant to the hearing held on JUNE 2, 1980, DE-

FAULT JUDGMENT be and hereby is entered against the defendant, COVINGTON HOUSING DEVELOPMENT CORPORATION, in the amount of $53,000.00, and his costs herein expended, plus interest at the rate of 8% per annum from the date of this judgment, until paid.

This 2d day of June, 1980.

/s/ WILLIAM O. BERTELSMAN, Judge

APPENDIX H

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CIVIL ACTION NO. 77-35

EDDIE THOMPSON, JR.,

Plaintiff

vs.

COVINGTON HOUSING DEVELOPMENT CORPORATION,

Defendant

ORDER

(Filed May 19, 1980)

This matter is before the court on the motion of the plaintiff to hold a hearing on the amount of the judgment to be entered herein against the Covington Housing Development Corporation, which is in default.

The court having considered the matter, and being advised,

IT IS ORDERED that said motion be, and it is, hereby sustained, and a hearing on such matter is hereby set for June 2, 1980, at 1:00 P.M.

This 19th day of May, 1980.

/s/ WILLIAM O. BERTELSMAN, Judge

APPENDIX I

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CIVIL ACTION NO. 77-35

EDDIE THOMPSON, JR.,

Plaintiff

vs.

COVINGTON HOUSING DEVELOPMENT CORPORATION,

Defendant

ORDER

(Filed April 18, 1980)

This matter is before the court on the motion of the plaintiff to set the case for trial against all defendants.

On the present status of the record, this motion is inappropriate and must be overruled. However, inasmuch as the plaintiff is representing himself in this action, the court deems it appropriate to make a more detailed explanation of the technicalities involved, than it would otherwise be inclined to do.

This action was originally brought against three defendants, Covington Housing Development Corporation, Jo-

seph Condit, and June Hedrick. No answer or other pleading was filed on behalf of Covington Housing Development Corporation. However, the other two defendants did appear and defend. On October 6, 1977, Judge Siler entered an order dismissing the claim against defendants Condit and Hedrick.

The plaintiff timely appealed this order, but the United States Court of Appeals for the Sixth Circuit dismissed the appeal, on the grounds that the judgment of October 6th, was not a final order. The reason it was not a final order was because no disposition was made of the claim against the Covington Housing Development Corporation. Under F.R.Civ.P. 54 (b) a ruling ruling with regard to claims by or against some of the parties to an action may be made, which is dispositive of such claims. However, such a ruling, if it disposes of less than all of the claims in a case, is not appealable, unless the trial court states in the judgment that there is no just reason for delay. The text of the rule is as follows:

> "Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of

judgment adjudicating all the claims and the rights and liabilities of all the parties."

Since the order of October 6th did not make the necessary recitation that there was not just reason for delay, the order was not appealable, and this is the reason why the appeal was dismissed by the Court of Appeals. Although the order was not appealable, the claims against defendants Condit and Hedrick have been held to be without merit, by an order of this court, and still stand. Therefore, the motion of the plaintiff to set a date for a trial against these defendants must be overruled. If plaintiff desires to pursue his appeal against these defendants further, the order of October 6, 1977, must be made final by disposing of the claim against the remaining defendant, Covington Housing Development Corporation. This defendant is in default, and the plaintiff may now, if he desires, prove up his damages against this defendant, and an appropriate judgment will be entered. However, plaintiff states, and apparently there is not doubt that, the Covington Housing Development Corporation is a defunct corporation, and the entry of judgment against it would be futile.

If plaintiff desires to abandon his claim against this defendant, without in any way prejudicing his claims or his right to appeal against the other defendants, he should make a motion to dismiss the defendant, Covington Housing Development Corporation, which will be sustained by the court. Upon the dismissal of that defendant, the judgment of October 6, 1977, will then become final, and plaintiff will then be able to appeal therefrom, if he still desires to do so.

In the light of the above considerations, and the court being advised,

IT IS ORDERED as follows:

1. Plaintiff's motion to set the case for trial is denied.

2. Plaintiff is hereby ordered to advise the court, through an appropriate motion, within 15 days of the entry of this order, whether he desires to have a hearing set for a finding of damages against the Covington Housing Development Corporation, pursuant to F.R.Civ.P. 55 (b), or whether he desires to dismiss that defendant from the case. In making this decision, plaintiff should note that entry of judgment against the Covington Housing Development Corporation will in no way affect the other defendants.

This 18th day of April, 1980.

/s/ JUDGE

APPENDIX J

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CIVIL ACTION NO. 77-35

EDDIE THOMPSON, JR.,

Plaintiff,

vs.

COVINGTON HOUSING DEVELOPMENT CORPORATION, ET AL.,

Defendants.

ORDER

(Filed October 5, 1977)

In accordance with the Memorandum Opinion of even date, it is

ORDERED AS FOLLOWS:

1. The defendants', Condit's and Hedrick's, motion to dismiss this action as barred by the statute of limitations is hereby sustained as to the plaintiff's causes of action under 42 U.S.C. §§ 1985 and 1986, and overruled as to the plaintiff's claim under 42 U.S.C. §§ 1981 and 1983.

2. The defendants', Condit's and Hedrick's, motion to dismiss this action on the basis of res judicata is hereby sustained.

3. This case be and is dismissed as to the defendants, Condit and Hedrick, but shall remain on the docket as of the remaining defendant, Covington Housing Development Corporation.

This 5th day of October, 1977.

/s/ EUGENE E. SILER, JR.

APPENDIX K

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

No. 77-35

EDDIE THOMPSON, JR.,

Plaintiff,

vs.

COVINGTON HOUSING DEVELOPMENT CORPORATION,
JOSEPH CONDIT, JUNE HEDRICK,

Defendants.

(Filed May 11, 1977)

Serve: Broadus Blythe, Chairman, 2732 Rosina, Covington, Kentucky

Joseph Condit, City Hall, Covington, Kentucky
June Hedrick, City Hall, Covington, Kentucky
Eddie Thompson, Jr., Process Agent, 736 Highland Avenue, Covington, Kentucky

Plaintiff Eddie Thompson, Jr. is a citizen of the State of Kentucky and resides in the City of Covington. Eddie

Thompson, Jr. is Executive Director of the Covington Housing Development Corporation.

The matter in controversy, exclusive of interest and cost exceeds Ten Thousand Dollars ($10,000). The jurisdiction of this court invoked, pursuant to the provisions of Title 28, United States Code, Sec. 1343, this being a suit in equity which is authorized by law, Title 42, United States Code, Sec. 1983, 1985, 1986, to be brought to redress the customs and usuage of rights, privileges and immunities secured by the Constitution and laws of the United States or by any act of congress providing for equal rights of citizens. The rights here sought to be redressed are rights guaranteed by due process and equal protection clause of the Fourteenth Amendment to the Constitution of the United States and Title 42 United States code, Sec. 1981 as hereinafter more fully appears. Plaintiff Eddie Thompson, Jr. states:

1. That defendant Covington Housing Development Corporation is a Kentucky corporation and an operating agency for the City of Covington in its Model Cities program by virtue of a contract entered into on October 5, 1972.

2. That defendant Condit was Finance Director for the City of Covington at the time and recommended that plaintiff's wages be withheld; that he is presently City Manager for the City of Covington.

3. Defendant Hedrick was Model Cities Director at the time plaintiff's wages were withheld. That at the present time she is still an agent and/or employee of the City.

Office - Supreme Court, U.S.
FILED
JUN 21 1982
ALEXANDER L. STEVAS,
CLERK

81-2143
NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

EDDIE THOMPSON, JR.,
Plaintiff-Petitioner,

vs.

COVINGTON HOUSING DEVELOPMENT CORPORATION, JOSEPH CONDIT AND JUNE HEDRICK,
Defendants-Respondents.

Response to Petition for a Writ of Certiorari to The United States Court of Appeals for the Sixth Circuit

---

BRIEF IN OPPOSITION

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TABLE OF CONTENTS

	Page
Table of Authorities	II
Appellees' Statement of the Case	1
Summary of Argument	2
Argument	3
Conclusion	4

TABLE OF AUTHORITIES

Page

Deena Products Co. v. *United Brick and Clay Workers*, 195 Fed. 613 (6th Cir. 1952) 3

Dixie Sand and Gravel Co., Inc. v. *T. V. A.*, 631 F.2d 73 (5th Cir. 1980) 3

Marten v. *Hess*, 176 F.2d 834 (Cir. 1949) 3

IN THE

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---

BRIEF IN OPPOSITION

APPELLEES' STATEMENT OF THE CASE

Appellees, Condit, Hedrick and the City of Covington wish to correct one error of fact in Thompson's Statement of the Case. The City of Covington would not pay a default judgment against the Covington Housing Development Corporation because it was not a party defendant in

the original action, not because it was not described as having a principal-agency relationship with the Development Corporation in the judgment of June 2, 1980. (Appendix G, p. 13a).

SUMMARY OF ARGUMENT

The appellant, Thompson, failed to file a timely notice of appeal with the Sixth Circuit Court of Appeals from the trial court's order of September 12, 1980, denying his motion to alter and amend the judgment of June 2, 1980, by reciting that the Covington Housing Development Corporation was an agency of the City of Covington. The Sixth Circuit Court of Appeals therefore lost jurisdiction to entertain Thompson's appeal.

Thompson's appeal was without merit in any event. The trial court over-ruled Thompson's motion to alter and amend a default judgment Thompson had against a defunct corporation, the Covington Housing Development Corporation. Thompson wanted the trial court to recite that the defunct corporation was an agency of the City of Covington thinking that this would make the City liable for the Fifty-three Thousand ($53,000.00) Dollar judgment. The appellees argue that if the City was not a party to the original action it cannot be made a party to the judgment.

ARGUMENT

Appellees, Condit, Hedrick and the City of Covington, amicus curiae, submit to the Court that there are no special and important reasons to review the judgment of the Sixth Circuit Court of Appeals and that none of the considerations listed in Rule 17 of the Supreme Court of the United States apply.

The Sixth Circuit Court of Appeals ruled that duplicative motions to reconsider the trial court's judgment will not continue to toll the statutory time period in which to file a Notice of Appeal from the judgment. The Court cites: *Marten* v. *Hess,* 176 F.2d 834 (Cir. 1949); *Deena Products Co.* v. *United Brick and Clay Workers,* 195 Fed. 613 (6th Cir. 1952); *Dixie Sand and Gravel Co., Inc.* v. *T.V.A.,* 631 F.2d 73 (5th Cir. 1980). Thompson filed his Notice of Appeal seventy-two (72) days after the trial court over-ruled his first motion to alter and amend.

The issue Thompson wants decided on appeal is whether the trial court should have recited in the default judgment against the Covington Housing Development Corporation that the defunct corporation was an agency of the City of Covington, Kentucky. Thompson thinks that recitation of agency would make the City of Covington liable for the Fifty-three Thousand ($53,000.00) Dollar default judgment against the defunct corporation.

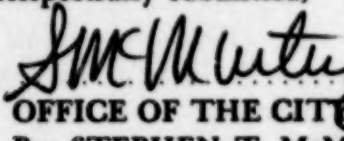
To quote the trial court's order of October 9, 1981, (Appendix E, p. 11a):

> "Plaintiff's problem in this case, and many of the other cases he has brought, is that he persists in representing himself, rather than obtaining legal representation, which causes him to pursue erroneous courses of action unauthorized by the Federal Rule of Civil Procedure, which the Court cannot grant."

CONCLUSION

The Supreme Court should deny certiorari.

Respectfully submitted,



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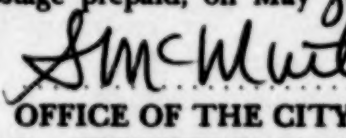
CERTIFICATE OF SERVICE

I certify that three (3) copies of this brief in opposition were served on Eddie Thompson, Jr., P.O. Box 1221, Covington, Kentucky 41012, by mailing these documents to him first class postage prepaid, on ~~May~~ June, 1982.



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